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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/484,928	06/07/1995	GARY K. MICHELSON	P-12509	5055
22882	7590	12/08/2003		
MARTIN & FERRARO, LLP 1557 LAKE O'PINES STREET, NE HARTVILLE, OH 44632			EXAMINER REIP, DAVID OWEN	
			ART UNIT 3731	PAPER NUMBER 43
DATE MAILED: 12/08/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

08/484,928

Applicant(s)

MICHELSON, GARY K.

Examiner

David O. Reip

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) See Continuation Sheet is/are allowed.
- 6) ☒ Claim(s) 301-303, 305-308, 330-332 and 334-336 is/are rejected.
- 7) ☒ Claim(s) 304 and 333 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 42.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Continuation of Disposition of Claims: Claims pending in the application are 173-199,201-228,231-233,235-252,255-272,275-277,279-293,295-310,313-315,317-320 and 323-369.

Continuation of Disposition of Claims: Claims allowed are 173-199,201-229,231-233,235-252,255-272,275-277,279-293,295-300,309,310,313-315,317-320,323 and 337-369.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 301-303, 305-308, 330-332, and 334-336 are rejected under 35 U.S.C. 102(b) as being anticipated by Mittelmeier et al (EP 0526682 A1). Figs. 14 and 15 of Mittelmeier et al show embodiments of non-threaded spinal fusion implants having all the limitations as recited in claims 301-303, 305-308, 330-332, and 334-336, including: bodies 36 or 39 formed of a metal mesh sheet material that is rolled and sintered for rigidity so as to be capable of serving as a vertebral body replacement, and thus is also capable of supporting two adjacent vertebral bodies in a spaced apart relationship; openings in the mesh permitting the growth of bone through the implant; surface "roughenings" 37 for engaging adjacent vertebral bodies; and fusion promoting material including hydroxyl apatite. Note that with respect to claim 330, the limitation "being formed of a cancellous material" is met in Mittelmeier et al, since the definition of cancellous is "having a coarse net-like or spongy structure." The metal mesh of Mittelmeier et al can be readily seen as comprising a coarse net-like structure. Note also that the cited reference was filed Aug 7, 1991 and published Feb 10, 1993, and is thus a proper 102(b) reference. The corresponding U.S. Patent 5,397,359 should be referred to for an English language version of the original German disclosure.

***Allowable Subject Matter***

Claims 173-199, 201-228, 231-233, 235-252, 255-272, 275-277, 279-293, 295-300, 309, 310, 313-315, 317-320, 323-329, and 337-369 are allowed.

Claims 304 and 333 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David O. Reip at (703) 308-3383. The examiner can normally be reached Mon-Thu and every other Fri from 7:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Milano, can be reached at (703) 308-2496. The official fax number for this Technology Center is (703) 872-9306. The examiner can also receive unofficial direct-to-computer faxes at 703-746-3310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist at (703) 308-0858.



David O. Reip  
Primary Examiner  
December 1, 2003